

**DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**

One Judiciary Square
441 4th Street, NW
Washington, DC 20001

Appeal by Carol Howell

BZA Appeal No. 20782

MOTION TO DISMISS APPEAL AS MOOT

Respondent, the District of Columbia Department of Consumer and Regulatory Affairs (“DCRA”), through its undersigned counsel, files this Motion to Dismiss Carol Howell’s (“Ms. Howell”) Appeal as Moot, and in support states as follows:

A. Background

Ms. Howell challenges the Zoning Administrator’s decision to grant a request for a minor deviation related to Building Permit No.: B2011821 (“Building Permit”) and proposed construction at 316 2nd Street, SE (“Property”). The subject minor deviation was granted under 11 DCMR §A-304.2 et. seq.

The purpose of the proposed construction at the Property was to expand the second floor, add a roof deck with pergola over the existing first floor, and expand the third floor over the second floor. The owners requested that the Zoning Administrator grant a minor deviation because the proposed addition would cause the Property’s lot occupancy to exceed the 60% maximum lot occupancy in the RF-3 zone in which the property sits. The Property’s owner believed that the total lot occupancy with the proposed addition would have been greater than 60% but less than 62% (“Minor Deviation”). The applicable regulation, 11 DCMR §A-304.2(a), states:

304.2 The Zoning Administrator is authorized to permit the following deviations from the Zoning Regulations for building permits that are not otherwise authorized by an approved order of

the Zoning Commission or the Board of Zoning Adjustment, if the Zoning Administrator, pursuant to Subtitle A § 304.3, determines that the deviation or deviations will not impair the purpose of the otherwise applicable regulations:

- (a) Deviations not to exceed two percent (2%) of the area requirements governing minimum lot area, maximum percentage of lot occupancy, and area standards of courts.

The Zoning Administrator (based on the information presented by the Property owners at the time the Minor Deviation was requested) approved the Minor Deviation and determined that it would not impair the purpose of the otherwise applicable regulations outlined in 11 DCMR §A-304.3. **See Ex. A (Email from Zoning Administrator approving proposed minor deviation).**

Ms. Howell appeals the Zoning Administrator's August 9, 2021 decision granting the requested Minor Deviation.

B. Ms. Howell's Appeal is Moot and Should be Dismissed

Ms. Howell's appeal is moot and should be dismissed for three (3) reasons. First, the granted Minor Deviation is revoked. Second, the Building Permit has expired and a requested extension of the Building Permit has been denied. Third, the Property Owner is no longer seeking the Minor Deviation at issue.

1. Revocation of the Minor Deviation Determination

DCRA reviewed Ms. Howell's expert reports and associated information in detail in preparation of its response to her appeal. DCRA has determined that the requested additional lot occupancy would result in a lot occupancy in excess of the permissible 62% that falls within the Zoning Administrator's discretion to grant a minor deviation pursuant to 11 DCMR §A-304.2(a). As a result, the previously granted minor deviation is revoked.

2. The Building Permit at Issue is Expired and a Requested Extension Has Been Denied

The Building Permit was issued on January 25, 2021. It expired on January 25, 2022. The Property's owners/representatives sought an extension of the Building Permit. The requested extension was denied on August 8, 2022. **See Exhibit B.** The Building Permit necessary to perform the construction at issue has expired. Construction has not been performed at the Property related to the Building Permit and Minor Deviation, nor can it be.

3. The 316 2nd Street, SE Owners Are No Longer Seeking the Requested Minor Deviation

The Property owners, through their counsel, have informed DCRA that they are no longer seeking the requested Minor Deviation. The Property owners are filing, concurrent with the instant Motion, their own Motion to Dismiss confirming their position. Regardless, future deviation requests by the Property owners under 11 DCMR §A-304.2 et. seq. would need to be resubmitted with new/modified plans and associated documents since the subject deviation decision is revoked and the Building Permit expired.

C. Conclusion

If the appeal presents solely issues of law and there are no adjudicative facts material to the BZA's ruling, an evidentiary hearing is not required. *Chiapella v. D.C. Board of Zoning Adjustment*, 954 A.2d 996, 1002 (D.C. 2008). Here, there are neither facts nor issues of law remaining to be decided. Conducting an evidentiary hearing would not serve a purpose, and it would be waste of government resources. Ms. Howell's appeal of the Zoning Administrator's minor deviation grant is now moot and should be dismissed.

For the aforementioned reasons, DCRA prays that the Board dismiss the Appeal as moot.

Respectfully submitted,

/s/ Esther Yong McGraw
ESTHER YONG MCGRAW
GENERAL COUNSEL

/s/ Melanie Konstantopoulos
MELANIE KONSTANTOPOULOS
DEPUTY GENERAL COUNSEL

/s/ Brent Fuller
Brent Fuller (DC Bar #502983)
Assistant General Counsel
Department of Consumer and
Regulatory Affairs
Office of the General Counsel
1100 4th Street, SW, 5th Floor
Washington, D.C. 20024
(202) 442-8407 (office)
(202) 442-9447 (fax)

CERTIFICATE OF SERVICE

I certify that on September 14, 2022 a copy of the foregoing was sent via electronic mail to:

Matthew LeGrant, Zoning Administrator
Office of the Zoning Administrator
Department of Consumer and Regulatory Affairs
Matthew.legrant@dc.gov

David Hall, Esquire
dfosterhall@gmail.com

Martin Sullivan, Esq.
msullivan@sullivanbarros.com

/s/R. Brent Fuller
R. Brent Fuller

EXHIBIT A

On Aug 9, 2021, at 4:13 PM, DCRA Customer Service <dcrcacs@dc.gov> wrote:

Dear Richard Holowchak,

Thank you for contacting the Office of the Zoning Administrator (OZA) within the Department of Consumer and Regulatory Affairs (DCRA). I am in receipt of your inquiry which has been submitted to me for review and follow up. I have determined that, after reviewing your email and attachments asking for minor flexibility for construction at 316 2nd St SE under 11 DCMR Section A-304.3, the following:

Subject Zone: **RF-3**

Type of Construction: *Rear addition/extension of the second and third floors*

Requested Relief: *Exceeds lot occupancy*

Standard and Citation: *60% maximum limit as per Section E-504.1*

Flexibility Requested: *2%**

Based on the information you provided, the requested flexibility is **at the limit of the 2% allowance for area** requirements, and I find, in accordance with Section A-304.3 (a)-(f) that:

- a) The light and air available to neighboring properties shall not be unduly affected as: *The minor increase of lot occupancy of the one foot extension is minimal.*
- b) The privacy of neighboring properties shall not be unduly compromised as: *The proposed extension will not have windows facing adjacent properties on the sides so it is unlikely to affect privacy.*
- c) The level of noise in the neighborhood shall not be unduly increased because: *The slight overage in lot occupancy is minimal.*
- d) The use and enjoyment of neighboring properties shall not be unduly compromised because: *The slight increase in lot occupancy is unlikely to have any effect.*
- e) No trees which would otherwise be protected by this title or other District of Columbia regulation, would be damaged or removed because: *No trees are proposed to be removed.*
- f) The general scale and pattern of buildings on the subject street frontage and the neighborhood will be maintained, consistent with the development standards of DCMR Title 11, as: *The construction for the slight overage in lot occupancy is at the rear of the property.*

Accordingly, you may proceed with an application and cite this communication that documents the **granting of the requested minor flexibility**. Thanks again for submitting your inquiry and please let me know if you have any additional questions or concerns.

Regards,

Matthew Le Grant
Zoning Administrator
Department of Consumer and Regulatory Affairs
Government of the District of Columbia
1100 4th St SW, Washington DC 20024
Matthew.legrant@dc.gov
Main 202 442-4576 – Desk 202 442-4652

Board of Zoning Adjustment
District of Columbia
CASE NO 20543
EXHIBIT NO 59C

EX. A

EXHIBIT B

Address

316 2ND STREET SE

SEARCH

- Overview
- Notices
- Licenses
- Permits
- Inspections
- Compliance & Enforcement
- More

316 2ND STREET SE

Download

Permits

^

Keyword search

Permit #	Permit Type	Date Filed	Address	Name	SSL	
B2011801	Construction/Addition Alteration Repair		316 2ND ST SE, WASHINGTON, DC 20003	DOCK YUEN JEW TRUSTEE	0762 0030	SHOW DETAILS
B2011821	Construction/Addition Alteration Repair	2021/01/25	316 2ND ST SE, WASHINGTON, DC 20003	CRYSTAL D CARGILL	0763 0021	HIDE DETAILS

Permit #	Permit Type	Date Filed	Address	Name	SSL
----------	-------------	------------	---------	------	-----

Owner Name:CRYSTAL D CARGILL

Applicant Name:JORDAN JAVIER; NA

Trade Name:

Permit Status: Permit Issued

[Get Latest Permit Status](#)

Job Classification:

Job Class Code

Size

Classification

End of Initial Review Cycle (Projected)

D-R

1,000 - 2,000 sq ft

Residential

2020/11/09

[More Info](#)

Description of work/ Review status:

The Owner is seeking to renovate the interior of all three floors, expand the second floor, add a roof deck with pergola over the existing first floor, and expand the third floor over the second floor. We are proposing the addition be full brick with a close match in color/style of brick and grout.

Discipline	Review Status	Status Date
Issue Permit	Permit Issued	01/25/2021
Issue Permit	Contractor Information Missing	01/21/2021
Cost Review	Cost Review - Not Required	01/21/2021
ProjectDox QA	Project Dox QA Approved	01/19/2021
Zoning Review	Zoning Review Approved - WC	01/19/2021
Neighbor Notification	Neighbor Notification Approved	01/11/2021
Energy Review	Energy Review Approved	12/15/2020
Zoning Review Pending	Comments Submitted to the Applicant for Correction	12/11/2020
Structural Review	Structural Review Approved	12/03/2020
CFA Review	CFA Review Approved	12/03/2020
HPRB Review	HPRB Review Approved	12/03/2020
DDOT Review	DDOT Review N/A	11/22/2020
Zoning Review Pending	Comments Submitted to the Applicant for Correction	10/23/2020
Structural Review Pending	Comments Submitted to the Applicant for Correction	10/13/2020
Energy Review Pending	Comments Submitted to the Applicant for Correction	10/13/2020

Energy Review Pending	Comments Submitted to the Applicant for Correction	10/13/2020
Permit #	Permit Type	Date Filed
Electrical Review Ap	Address	Name
SSL		10/05/2020
DC Water Review	DC Water Review Approved	10/02/2020
Neighbor Notification Pending	Comments Submitted to the Applicant for Correction	10/02/2020
Neighbor Notification Pending	Comments Submitted to the Applicant for Correction	10/02/2020
DOEE EV Review	DOEE EV Review Approved	10/02/2020
DOEE EV Review	DOEE EV Review Approved	10/01/2020
Plumbing Review	Plumbing Review Approved	10/01/2020
Mechanical Review	Mechanical Review Approved	10/01/2020
DOEE SE-SW Review	DOEE SE-SW Review N/A	09/30/2020
HPRB Review Pending	Comments Submitted to the Applicant for Correction	09/30/2020
CFA Review Pending	Comments Submitted to the Applicant for Correction	09/30/2020
DC Water Review Pending	Comments Submitted to the Applicant for Correction	09/29/2020
DOEE EV Review Pending	Comments Submitted to the Applicant for Correction	09/29/2020
Plan Review Coordinator	Projectdox Under Review	09/29/2020
Plan Review Coordinator	Projectdox Accepted	09/03/2020
Wall Check Verification	In-Process	

B2011821-EXT-1	Construction/Permit/Extension		316 2ND ST SE, WASHINGTON, DC 20003	Name	SSL	SHOW DETAILS
B2111825	Construction/Alteration and Repair	2021/10/21	316 2ND ST SE, WASHINGTON, DC 20003	CARGILL, JEFFREY D	0763 0021	SHOW DETAILS
B2111825-EXT-1	Construction/Permit/Extension		316 2ND ST SE, WASHINGTON, DC 20003	Name	SSL	SHOW DETAILS
B2112471	Construction/Alteration and Repair		316 2ND ST SE, WASHINGTON, DC 20003	CARGILL, JEFFREY D	0763 0021	SHOW DETAILS
B2200036	Construction/Alteration and Repair		316 2ND ST SE, WASHINGTON, DC 20003	CARGILL, JEFFREY D	0763 0021	SHOW DETAILS
DK2100507	Construction/Deck		316 2ND ST SE, WASHINGTON, DC 20003	CARGILL, JEFFREY D	0763 0021	SHOW DETAILS
E2104868	Supplemental/Electrical	2021/03/15	316 2ND ST SE, WASHINGTON, DC 20003	CARGILL, CRYSTAL D	0763 0021	SHOW DETAILS
SR20SO07477	Surveyors/Customer Request		316 2ND ST SE, WASHINGTON, DC 20003	Name	SSL	SHOW DETAILS

Public Space Permits (Construction) 

Public Space Permits (Non construction) 

DISCLAIMER: Information provided through the Scout application is intended for informational purposes, only. DCRA makes all reasonable efforts to provide information that is current, complete, and correct, however the Agency does not guarantee the quality of information in Scout. The Scout application contains information that originates from external sources, such as other District of Columbia Government agencies. DCRA attempts to fully preserve the fidelity of externally sourced information but the Agency does not guarantee and cannot be held liable for inaccuracies in externally sourced information. DCRA may not be held responsible or liable, directly or indirectly for any damages or losses caused - or alleged to be caused – by, or in connection with the use of, or reliance on any information in the Scout application. Furthermore, DCRA assumes no responsibility or liability for any consequence resulting directly or indirectly for any action taken or failures to act made in reliance on information in the Scout application.

Address

316 2ND STREET SE

SEARCH

- Overview
- Notices
- Licenses
- Permits
- Inspections
- Compliance & Enforcement
- More

316 2ND STREET SE

Download

Permits



Keyword search

Permit #	Permit Type	Date Filed	Address	Name	SSL	
B2011801	Construction/Addition Alteration Repair		316 2ND ST SE, WASHINGTON, DC 20003	DOCK YUEN JEW TRUSTEE	0762 0030	SHOW DETAILS
B2011821	Construction/Addition Alteration Repair	2021/01/25	316 2ND ST SE, WASHINGTON, DC 20003	CRYSTAL D CARGILL	0763 0021	SHOW DETAILS
B2011821- EXT-1	Construction/Permit/Extension		316 2ND ST SE, WASHINGTON, DC 20003	Name	SSL	HIDE DETAILS
Owner Name: Applicant Name: Trade Name:						
Permit Status:	Extension Denied	Get Latest Permit Status				
Job Classification:						
<div>More Info</div>						
Job Class Code		Size	Classification		End of Initial Review Cycle (Projected)	
N/A		N/A	N/A		N/A	
Description of work/ Review status:						
<div></div>						
Discipline		Review Status			Status Date	
Extension Review		Extension Denied			08/04/2022	
B2111825	Construction/Alteration and Repair	2021/10/21	316 2ND ST SE, WASHINGTON, DC 20003	CARGILL, JEFFREY D	0763 0021	SHOW DETAILS

Permit #	Permit Type	Date Filed	Address	SE, Name	SSL	
B2111825-EXT-1	Construction/Permit/Extension		316 2ND ST SE, WASHINGTON, DC 20003	CARGILL, JEFFREY D	0763 0021	SHOW DETAILS
B2112471	Construction/Alteration and Repair		316 2ND ST SE, WASHINGTON, DC 20003	CARGILL, JEFFREY D	0763 0021	SHOW DETAILS
B2200036	Construction/Alteration and Repair		316 2ND ST SE, WASHINGTON, DC 20003	CARGILL, JEFFREY D	0763 0021	SHOW DETAILS
DK2100507	Construction/Deck		316 2ND ST SE, WASHINGTON, DC 20003	CARGILL, JEFFREY D	0763 0021	SHOW DETAILS
E2104868	Supplemental/Electrical	2021/03/15	316 2ND ST SE, WASHINGTON, DC 20003	CARGILL, CRYSTAL D	0763 0021	SHOW DETAILS
SR20SO07477	Surveyors/Customer Request		316 2ND ST SE, WASHINGTON, DC 20003	Name	SSL	SHOW DETAILS

Items per page: 10 1 - 10 / 11 |< < > >|

Public Space Permits (Construction) 

Public Space Permits (Non construction) 

DISCLAIMER: Information provided through the Scout application is intended for informational purposes, only. DCRA makes all reasonable efforts to provide information that is current, complete, and correct, however the Agency does not guarantee the quality of information in Scout. The Scout application contains information that originates from external sources, such as other District of Columbia Government agencies. DCRA attempts to fully preserve the fidelity of externally sourced information but the Agency does not guarantee and cannot be held liable for inaccuracies in externally sourced information. DCRA may not be held responsible or liable, directly or indirectly for any damages or losses caused - or alleged to be caused – by, or in connection with the use of, or reliance on any information in the Scout application. Furthermore, DCRA assumes no responsibility or liability for any consequence resulting directly or indirectly for any action taken or failures to act made in reliance on information in the Scout application.